

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 DAVID S. CHANEY
Chief Assistant Attorney General
3 ROCHELLE C. EAST
Senior Assistant Attorney General
4 JONATHAN L. WOLFF
Supervising Deputy Attorney General
5 KYLE A. LEWIS, State Bar No. 201041
Deputy Attorney General
6 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
7 Telephone: (415) 703-5677
Fax: (415) 703-5843
8 Email: Kyle.Lewis@doj.ca.gov

9 Attorneys for Defendants R. Schnorr, M. Vela, and
M. Arfa.
10

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 **DERRICK LEE SLEDGE,**

16 Plaintiff,

17 v.

18 **DAVID BALKIND, R. SCHNORR, J. T.**
WHITE, N. A. ELLIS, M. VELA, S. R.
19 **STINSON, M. ARFA, and JOHN MARSHALL**

20 Defendants.
21

Case No. C 07-4622 CRB (PR)

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO
DISMISS**

22 **INTRODUCTION**

23 In his Opposition to Defendants' Motion to Dismiss, Plaintiff appears to argue that his
24 claims should not be dismissed under Federal Rule of Civil Procedure 12(b)(6) because
25 Plaintiff's Complaint meets the threshold requirement for pleadings. Plaintiff also appears to
26 argue that his Complaint should not be barred by the prior invalidation rule because he is not
27 challenging the action directly affecting the duration of his sentence. Furthermore, Plaintiff
28 contends that Defendants cannot claim qualified immunity from liability for civil damages under

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1 42 U.S.C. § 1983 because they violated clearly established statutory and Constitutional rights.
2 Lastly, Plaintiff claims that his prayer for punitive damages is proper because he is not required
3 to plead a definite dollar amount, only a type of relief requested.

4 However, as more thoroughly discussed below, Plaintiff was not denied due process and
5 his suit fails to state a claim under which relief may be granted. Additionally, Plaintiff's suit is
6 premature and barred by the prior invalidation rule regarding civil claims arising from a criminal
7 conviction. Furthermore, Defendants are entitled to qualified immunity because their conduct
8 was constitutionally valid. Finally, Plaintiff fails to sufficiently allege the basis for an award of
9 punitive damages, and his request for this type of damages must be dismissed. For these reasons,
10 the Court should dismiss Plaintiff's suit.

11 **STATEMENT OF THE CASE**

12 On December 13, 2006, Plaintiff Derrick Lee Sledge, a state prison inmate, was identified
13 as a participant in a large prison yard fight. Plaintiff was subsequently charged with a
14 disciplinary violation, a hearing was conducted, and Plaintiff was found guilty of participating in
15 the fight. Throughout his disciplinary proceedings, Plaintiff was afforded all Constitutionally-
16 mandated due process protections, resulting in a legally sound conviction and sentence.

17 Plaintiff subsequently filed suit against various prison officials alleging that he was denied
18 due process in connection with the disciplinary proceedings against him. However, Plaintiff was
19 not denied due process and his suit fails to state a claim under which relief may be granted. On
20 April 10, 2008, Defendants filed a motion to dismiss Plaintiff's suit under Federal Rule of Civil
21 Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. In the motion to
22 dismiss, Defendants also contend that Plaintiff's suit is premature and barred by the prior
23 invalidation rule regarding civil claims arising from a criminal conviction. Defendants further
24 assert that prison officials are entitled to qualified immunity and Plaintiff's claim for punitive
25 damages against them are without sufficient justification.

1 On June 23, 2008, Plaintiff filed his Opposition to Defendants' Motion to Dismiss.^{1/}
 2 (Court Docket (CD) # 20.) Defendants now submit this reply in support of their Motion to
 3 Dismiss Plaintiff's suit.

4 ARGUMENT

5 **A. Plaintiff's Due Process Claim Must Be Dismissed as He Fails to State a Claim** 6 **Under Which Relief May Be Granted.**

7 Plaintiff's Complaint fails to state a claim that he was denied due process by Defendants in
 8 connection with the disciplinary proceedings against him. To the contrary, the documents
 9 referenced in Plaintiff's Complaint and filed with this Court by Plaintiff (CD # 1) demonstrate
 10 that Plaintiff was provided with the appropriate due process protections throughout his
 11 disciplinary proceedings. These documents demonstrate that Plaintiff was afforded all
 12 Constitutionally-mandated procedures associated with the disciplinary process, resulting in a
 13 valid conviction based on sufficient evidence.

14 In the report of the hearing on Plaintiff's Rules Violation Report (CD # 1, at D2-D3), the
 15 Hearing Official stated that "SLEDGE acknowledged receiving copies of the CDC-115 and all
 16 other pertinent documentation more than 24 hours prior to the hearing. A review of the CDC-
 17 115 indicates that all of the time constraints have been met." Regarding witnesses, the Hearing
 18 Official noted "that SLEDGE does not request the presence of any staff or inmate witnesses at
 19 the hearing." Furthermore, Plaintiff's Serious Rules Violation Report reflects that he did not
 20 request a Staff Assistant be assigned to him during his disciplinary proceedings. (CD # 1, Ex. 1.)
 21 The Rules Violation Report also states that the Hearing Official assessed Plaintiff's mental health
 22 and educational level and determined that Plaintiff did not meet the criteria for assignment of a
 23 Staff Assistant. (CD # 1 at D2.) These actions clearly satisfy the procedural due process
 24 requirements for disciplinary proceedings established by the Supreme Court in *Wolff v.*
 25 *McDonnell*, 418 U.S. 539, 564-70 (1974), and demonstrate that Defendants did not violate

26
 27 1. Plaintiff requested an extension to file an opposition from the Court on May 8, 2008. (CD
 28 # 15.) The Court granted an extension, directing that Plaintiff's opposition must be filed by June 20,
 2008. (CD # 17.)

1 Plaintiff's rights in connection with the disciplinary hearings against him.

2 In his Opposition, Plaintiff offers no further information, evidence, or legal support to
 3 counter Defendants' argument that he has failed to state a claim under which relief can be
 4 granted. Rather, Plaintiff restates the facts of his case without including any additional material
 5 demonstrating how his Constitutional rights to due process in the disciplinary proceedings
 6 against him were violated. (CD # 20, at 3-7.) Although Plaintiff correctly states the minimum
 7 requirements for alleging a claim under Federal Rule of Civil Procedure 8(a), he does not
 8 overcome the fatal flaw of his complaint--his own supporting documents demonstrate that he was
 9 provided with full procedural due process during his disciplinary proceedings. Furthermore,
 10 Plaintiff's Opposition provides no challenge to Defendants' arguments regarding the Complaint's
 11 failure allege that Defendants Schnorr, Vela, and Arfa actually participated in the violation of
 12 Plaintiff's due process rights in connection with his disciplinary proceedings. (CD # 12 at 8-9.)

13 **B. Plaintiff's Suit is Barred by the Prior Invalidation Rule.**

14 Additionally, Plaintiff's Complaint should be dismissed because the due process claims
 15 raised against Defendants are barred by the prior invalidation rule established in *Heck v.*
 16 *Humphrey*, 512 U.S. 477 (1994). As the Supreme Court stated in *Heck*, "when a state prisoner
 17 seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of
 18 the plaintiff would necessarily imply the invalidity of this conviction or sentence; if it would, the
 19 complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence
 20 has already been invalidated." *Id.* at 487. In this case, Plaintiff lost ninety days of good time
 21 credit as a result of the rule violation stemming from his participation in the yard fight. (CD # 1
 22 at D3). If Plaintiff were to succeed on his civil due process claim against Defendants, it would
 23 necessarily imply the invalidity of the punishment imposed as a result of the disciplinary
 24 proceeding, thus constituting precisely the situation addressed by the holding in *Heck*. Therefore,
 25 Plaintiff's Complaint is barred, even if Plaintiff did not request expungement of the rule violation
 26 or restoration of good time credits in his request for relief.

27 Plaintiffs' Opposition fails to raise any salient argument against the application of the prior
 28 invalidation rule to his suit. (CD # 20 at 8.) Instead, Plaintiff appears to allege some type of

1 cruel and unusual punishment incident to his incarceration. (Id.) This is not a valid legal
 2 argument against imposition of the prior invalidation rule.^{2/} Where Plaintiff has failed to
 3 establish that his rule violation and the punishment imposed have been invalidated, Plaintiff's
 4 Complaint must be dismissed. .

5 **C. Defendants Are Entitled to Qualified Immunity.**

6 Defendants have also moved to dismiss Plaintiff's claims against them on the grounds that
 7 insufficient evidence was provided regarding their knowledge of or participation in the alleged
 8 constitutional violation committed against the Plaintiff. In his Opposition, Plaintiff claims that
 9 the Defendants' "unlawful action to violated [sic] clearly established statutory and constitutional
 10 rights which any reasonable person would have honestly known." (CD # 20 at 9.) Plaintiff
 11 elaborates no further, nor does he offer a reasoned challenge Defendants' arguments regarding
 12 their entitlement to qualified immunity.

13 In neither the Complaint nor the Opposition has Plaintiff alleged sufficient facts to support
 14 a cognizable legal theory that Defendants were involved in the disciplinary proceedings against
 15 him, much less violated his due process rights in connection with those disciplinary proceedings.
 16 (CD # 12 at 6-11.) Furthermore, the documents filed by Plaintiff with the Court demonstrate that
 17 he was afforded all of the required procedural due process protections. Where, as here, this is no
 18 violation of a constitutional right, Defendants are entitled to qualified immunity. *Saucier v. Katz*,
 19 533 U.S. 194, 201 (2001). Furthermore, Plaintiff's allegations show that Defendants acted as
 20 reasonable officials in light of the circumstances. As demonstrated by Plaintiff's documents,
 21 Defendants took actions to ensure that Plaintiff was afforded his due process rights throughout
 22 his disciplinary proceedings and Defendants reasonably believed they were providing Plaintiff
 23

24
 25 2. Plaintiff's assertion of cruel and unusual punishment in his Opposition is likewise
 26 improper. In the screening order on the Complaint, the Court found only that Plaintiff stated a
 27 cognizable claim for denial of due process in connection with the disciplinary proceedings against
 28 him against all named Defendants. (CD # 6 at 2.) The Court dismissed Plaintiff's allegations that
 he was falsely charged with a disciplinary violation and that his underlying administrative appeals
 regarding participation in the yard fight were mishandled. (Id.) Plaintiff's Complaint did not allege
 claims regarding cruel and unusual punishment suffered during his imprisonment.

1 with the appropriate due process considerations in connection with the disciplinary proceedings
 2 against him. Thus, under the two-prong test adopted in *Saucier*, 533 U.S. at 205–06, Defendants
 3 are entitled to qualified immunity. Accordingly, Plaintiff's claims against Defendants must be
 4 dismissed.

5 **D. Plaintiff Fails to Sufficiently Plead His Claim for Punitive Damages.**

6 Defendants also moved the Court to dismiss Plaintiff's claim for an award of punitive
 7 damages on the grounds that the complaint fails to allege that Defendants acted with the requisite
 8 evil motive or callous indifference. Plaintiff's Opposition does not sufficiently counter this
 9 aspect of Defendants' Motion to Dismiss, nor does Plaintiff supply additional information
 10 justifying punitive damages against Defendants in either their official or individual capacities.
 11 As such, Plaintiff's request for punitive damages should be dismissed.

12
 13 **CONCLUSION**

14 For the reasons mentioned in this reply brief and in Defendants' moving papers,
 15 Defendants respectfully request that the Court grant their Motion to Dismiss.

16
 17 Dated: August 28, 2008

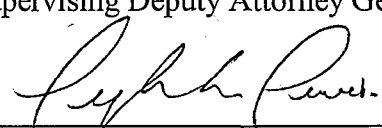
18 Respectfully submitted,

19 EDMUND G. BROWN JR.
 Attorney General of the State of California

20 DAVID S. CHANEY
 Chief Assistant Attorney General

21 ROCHELLE C. EAST
 Acting Senior Assistant Attorney General

22 JONATHAN L. WOLFF
 Supervising Deputy Attorney General

23
 24 
 25 KYLE A. LEWIS
 Deputy Attorney General
 Attorneys for Defendants R. Schnorr, M. Vela, and
 26 M. Arfa.

27 Sledge--Reply to Opposition to MTD.wpd
 28 SF2008400524

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **D. L. Sledge v. D. Balkind, et al.**

No.: **C 07-4622 CRB**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **August 29, 2008**, I served the attached

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by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Derrick L. Sledge (P-43766)
CTF - Soledad
P.O. Box 689; XW-132L
Soledad, CA 93960
In Pro Per

Derrick L. Sledge (P-43766)
Correctional Training Facility
CTF/CW-134L
P. O. Box 686
Soledad, CA 93960

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **August 29, 2008**, at San Francisco, California.

R. Panganiban
Declarant

/S/ R. Panganiban
Signature